

1 WILLIAM A. ISAACSON (Admitted *Pro Hac Vice*)

2 (wisaacson@bsflp.com)

2 BOIES, SCHILLER & FLEXNER LLP

3 5301 Wisconsin Ave, NW, Washington, DC 20015

3 Telephone: (202) 237-2727; Fax: (202) 237-6131

4 JOHN F. COVE, JR (Admitted *Pro Hac Vice*)

5 (jcove@bsflp.com)

6 BOIES, SCHILLER & FLEXNER LLP

6 1999 Harrison Street, Suite 900, Oakland, CA 94612

7 Telephone: (510) 874-1000; Fax: (510) 874-1460

8 RICHARD J. POCKER #3568

9 (rpocker@bsflp.com)

9 BOIES, SCHILLER & FLEXNER LLP

10 300 South Fourth Street, Suite 800, Las Vegas, NV 89101

10 Telephone: (702) 382 7300; Fax: (702) 382 2755

11 DONALD J. CAMPBELL #1216

12 (djc@campbellandwilliams.com)

13 J. COLBY WILLIAMS #5549

13 (jcw@campbellandwilliams.com)

14 CAMPBELL & WILLIAMS

14 700 South 7th Street, Las Vegas, Nevada 89101

15 Telephone: (702) 382-5222; Fax: (702) 382-0540

16 *Attorneys for Defendant* Zuffa, LLC, d/b/a

17 Ultimate Fighting Championship and UFC

18
19 UNITED STATES DISTRICT COURT

20 DISTRICT OF NEVADA

21 Cung Le, Nathan Quarry, Jon Fitch, Brandon
22 Vera, Luis Javier Vazquez, and Kyle
22 Kingsbury on behalf of themselves and all
23 others similarly situated,

Case No.: 2:15-cv-01045-RFB-(PAL)

24 Plaintiffs,

v.

**ZUFFA, LLC'S MOTION TO SEAL
EXHIBITS TO THE JOINT STATUS
REPORT**

25 Zuffa, LLC, d/b/a Ultimate Fighting
26 Championship and UFC,

27 Defendant.

1 Pursuant to the Stipulated Protective Order governing confidentiality of documents
 2 entered by the Court on February 10, 2016, Dkt. 217 (“Protective Order”), the parties’ agreement
 3 regarding the disclosure of documents during the search term testing process, and Rules 5.2 and
 4 26(c) of the Federal Rules of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”) respectfully
 5 requests that the Court order the Clerk of the Court to file under seal of Exhibits G, H and I of the
 6 parties’ Joint Status Report. This motion is accompanied by the Declaration of John F. Cove, Jr.
 7 in Support of Zuffa, LLC’s Motion to Seal.

8 The Protective Order in this case provides for the filing of documents under seal where
 9 portions or the entirety of the document contain Confidential or Highly Confidential Information.
 10 Dkt. 217, ¶ 14.3. In the parties Joint Status Report, Plaintiffs include 3 documents as exhibits
 11 which contain confidential information regarding Zuffa’s internal finances, financial terms and
 12 incentives of contractual negotiations, and business strategies and analysis. Because these
 13 documents implicate Zuffa’s confidential information, Zuffa moves to file these exhibits and the
 14 portion of the Joint Status Report under seal.

15 Specifically, Zuffa seeks to seal the following information or exhibits:

16 Exhibit G (COX-0072901)	This document includes the specific financial terms and incentives offered to a particular athlete during a negotiation.
17 Exhibit H (COX-0001451)	This document includes the specific financial terms and incentives offered to a particular athlete during a negotiation.
18 Exhibit I (LFertitta)	This document contains Zuffa’s confidential financial information as well as internal business analyses and assessments.

20
 21 While Zuffa recognizes the importance of access to public documents, for sealing requests
 22 that do not relate to dispositive motions, the presumption of public access to court filings may be
 23 overcome by a showing of good cause under Rule 26(c). *See Pintos v. Pacific Creditors Ass’n*,
 24 605 F.3d 665, 678 (9th Cir. 2010); *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).
 25 The Court has “broad latitude” under Rule 26(c) “to prevent disclosure of materials for many
 26 types of information, including, but not limited to, trade secrets or other confidential research,
 27 development, or commercial information.” *Phillips v. General Motors Corp.*, 307 F.3d 1206,
 28 1211 (9th Cir. 2002) (citations omitted). In light of the public interest, Zuffa has narrowly

1 tailored its request by only sealing the Exhibits with confidential information. Accordingly, the
2 request to seal is narrowly tailored. A “particularized showing under the good cause standard of
3 Rule 26(c) will suffice to warrant preserving the secrecy of sealed discovery material attached to
4 non-dispositive motions.” *Kamakana v. City and Cnty of Honolulu*, 447 F.3d 1172, 1180 (9th
5 Cir. 2006) (citations and internal quotation marks omitted).

6 There is good cause to seal documents containing confidential business assessments and
7 strategy, financial information and communications containing financial terms, incentives and
8 negotiations over contract terms where such information could cause competitive harm if
9 disclosed publicly. *See Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-
10 JCM-GWF, 2011 WL 1630338 at *2 (D. Nev. Apt. 29, 2011) (finding good cause to seal
11 information regarding finances, contractual agreements and information regarding particular
12 arrangements with customers); *Aevoe Corp. v. AE Tech. Co.*, No. 2:12-cv-00053-GMN-NJK,
13 2013 WL 2302310, at *2 (D. Nev. May 24, 2013) (finding good cause to seal financial
14 information and business strategies); *Rainbow Bus. Solutions v. Merch. Servs.*, 2013 U.S. Dist.
15 LEXIS 67190, at *9 (N.D. Cal. May 10, 2013) (finding compelling reasons to seal “particular
16 information about the party’s contractual agreements . . . the public disclosure of which would
17 impede its ability to negotiate with business partners and to stay competitive in the marketplace”).

18 If Zuffa’s internal business strategies, its financial information, or its negotiations over the
19 specific terms or incentives that it offers individual athletes are publicly disclosed, it could cause
20 Zuffa competitive harm by giving competitors unfair insight into Zuffa’s finances, agreements,
21 negotiation strategy and its internal business processes. Zuffa treats this information as
22 confidential.

23 In addition, the third party who produced Exhibits G and H has requested confidential
24 treatment of these documents pursuant to the Protective Order.

25 Zuffa respectfully requests that the designated portions of the documents identified as
26 Exhibits G, H, and I be permitted to be filed under seal.

27
28

1 Dated: February 19, 2016

BOIES, SCHILLER & FLEXNER LLP

3 By: /s/John F. Cove, Jr.

4 John F. Cove, Jr.

5 *Attorneys for Defendant Zuffa, LLC, d/b/a*
Ultimate Fighting Championship and UFC

6 John F. Cove, Jr. (Admitted *Pro Hac Vice*)
7 BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
8 Oakland, CA 94612
Tel: (510) 874-1000
9 Fax: (510) 874-1460
10 Email: jcove@bsflp.com

11 William A. Isaacson (Admitted *Pro Hac Vice*)
12 BOIES, SCHILLER & FLEXNER LLP
13 5301 Wisconsin Ave, NW
14 Washington, DC 20015
15 Tel: (202) 237-2727
16 Fax: (202) 237-6131
17 Email: wisaacson@bsflp.com

18 Donald J. Campbell #1216
19 J. Colby Williams #5549
20 CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
Email: djc@campbellandwilliams.com
jcw@campbellandwilliams.com

21 Richard J. Pocker #3568
22 BOIES, SCHILLER & FLEXNER LLP
23 300 South Fourth Street, Suite 800
24 Las Vegas, NV 89101
25 Tel: (702) 382 7300
Fax: (702) 382 2755
Email: rpocker@bsflp.com

26 *Attorneys for Defendant Zuffa, LLC, d/b/a Ultimate*
27 Fighting Championship and UFC

1 WILLIAM A. ISAACSON (Admitted *Pro Hac Vice*)
2 (wisaacson@bsflp.com)

2 BOIES, SCHILLER & FLEXNER LLP
3 5301 Wisconsin Ave, NW, Washington, DC 20015
3 Telephone: (202) 237-2727; Fax: (202) 237-6131

4 JOHN F. COVE, JR (Admitted *Pro Hac Vice*)
5 (jcove@bsflp.com)
6 BOIES, SCHILLER & FLEXNER LLP
6 1999 Harrison Street, Suite 900, Oakland, CA 94612
7 Telephone: (510) 874-1000; Fax: (510) 874-1460

8 RICHARD J. POCKER #3568
9 (rpocker@bsflp.com)
9 BOIES, SCHILLER & FLEXNER LLP
10 300 South Fourth Street, Suite 800, Las Vegas, NV 89101
10 Telephone: (702) 382 7300; Fax: (702) 382 2755

11 DONALD J. CAMPBELL #1216
12 (djc@campbellandwilliams.com)
13 J. COLBY WILLIAMS #5549
13 (jcw@campbellandwilliams.com)
14 CAMPBELL & WILLIAMS
14 700 South 7th Street, Las Vegas, Nevada 89101
15 Telephone: (702) 382-5222; Fax: (702) 382-0540

16 *Attorneys for Defendant* Zuffa, LLC, d/b/a
17 Ultimate Fighting Championship and UFC

18
19 UNITED STATES DISTRICT COURT

20 DISTRICT OF NEVADA

21 Cung Le, Nathan Quarry, Jon Fitch, Brandon
22 Vera, Luis Javier Vazquez, and Kyle
22 Kingsbury on behalf of themselves and all
23 others similarly situated,

24 Plaintiffs,
24 v.

25 Zuffa, LLC, d/b/a Ultimate Fighting
26 Championship and UFC,

27 Defendant.

28 Case No.: 2:15-cv-01045-RFB-(PAL)

**DECLARATION OF JOHN F. COVE, JR.
IN SUPPORT OF ZUFFA, LLC'S
MOTION TO SEAL**

1 I, John F. Cove, Jr., declare as follows:

2 1. I am an attorney admitted to practice before the courts in the states of California
3 and New York and am admitted Pro Hac Vice to practice before this Court. I am a Partner in the
4 law firm Boies, Schiller & Flexner LLP, counsel to Defendant Zuffa, LLC (“Zuffa”) in this case.

5 2. I make this declaration in support of Zuffa’s Motion to Seal Exhibits to the Joint
6 Status Report. Based on my review of the files and records in this case, I have firsthand
7 knowledge of the contents of this declaration and could testify thereto.

8 3. Zuffa seeks to file under seal three exhibits identified as Exhibits G, H and I to the
9 Joint Status Report. This declaration is submitted to provide the factual and legal support for the
10 filing of this material.

11 4. Federal Rule of Civil Procedure 26(c) provides that the Court may “issue an order
12 to protect a party or person from annoyance, embarrassment, oppression or undue burden or
13 expense” by “requiring that a trade secret or other confidential research, development, or
14 commercial information not be revealed or be revealed only in a specific way.”

15 5. **Exhibit G** contains specific financial terms and incentives offered during a
16 contract negotiation.

17 6. **Exhibit H** contains specific financial terms and incentives discussed during a
18 contract negotiation.

19 7. **Exhibit I** contains Zuffa’s confidential financial information and reflects Zuffa’s
20 internal business strategies and analyses.

21 8. It is my understanding that Zuffa treats the financial terms and incentives offered
22 during contract negotiations as confidential. Zuffa also considers its internal decision-making
23 processes and business assessments confidential. Disclosure of this information could expose
24 Zuffa’s confidential financial information and approach to internal decision-making strategies and
25 negotiations and would provide competitors with an unfair insight into Zuffa’s business practices.

26 9. Exhibits G and H have also been designated as confidential under the Protective
27 Order by the third party that produced them.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing facts are true and correct. Executed this 19th day of February, 2016, in Oakland,
3 California.

4 */s/ John F. Cove, Jr.*
5 John F. Cove, Jr.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 WILLIAM A. ISAACSON (Admitted *Pro Hac Vice*)
2 (wisaacson@bsflp.com)
3 BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Ave, NW, Washington, DC 20015
Telephone: (202) 237-2727; Fax: (202) 237-6131

5 JOHN F. COVE, JR (Admitted *Pro Hac Vice*)
6 (jcove@bsfllp.com)
7 BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900, Oakland, CA 94612
Telephone: (510) 874-1000; Fax: (510) 874-1460

8 RICHARD J. POCKER #3568
(rpocker@bsfllp.com)
9 BOIES, SCHILLER & FLEXNER LLP
10 300 South Fourth Street, Suite 800, Las Vegas, NV 89101
Telephone: (702) 382 7300; Fax: (702) 382 2755

11 DONALD J. CAMPBELL #1216
12 (djc@campbellandwilliams.com)
13 J. COLBY WILLIAMS #5549
14 (jcw@campbellandwilliams.com)
15 CAMPBELL & WILLIAMS
700 South 7th Street, Las Vegas, Nevada 89101
Telephone: (702) 382-5222; Fax: (702) 382-0540

16 Attorneys for Defendant Zuffa, LLC, d/b/a
Ultimate Fighting Championship and UFC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

21 Cung Le, Nathan Quarry, Jon Fitch, Brandon
22 Vera, Luis Javier Vazquez, and Kyle
Kingsbury on behalf of themselves and all
others similarly situated,

Case No.: 2:15-cv-01045-RFB-(PAL)

24 Plaintiffs,
v.

**ORDER GRANTING ZUFFA,
LLC'S MOTION TO SEAL
EXHIBITS TO THE JOINT STATUS
REPORT**

25 Zuffa, LLC, d/b/a Ultimate Fighting
26 Championship and UFC.

Defendant.

[PROPOSED] ORDER

2 Pending before this Court is the parties Joint Status Report filed on February 19, 2016.
3 Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit sealing
4 of court documents for, *inter alia*, the protection of “a trade secret or other confidential research,
5 development, or commercial information.” Fed. R. Civ. P. 26(c). Having considered Zuffa,
6 LLC’s Motion to Seal, good cause having been shown:

7 IT IS HEREBY ORDERED THAT Zuffa, LLC's Motion to Seal is GRANTED. The
8 Clerk of the Court shall file under seal the documents specified in Zuffa's Motion.

9 IT IS SO ORDERED.

DATED: February 25, 2016

By: Peggy A. Leen
Hon. Peggy A. Leen
UNITED STATES MAGISTRATE JUDGE